

DEC 12 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIO CESAR CALDERON,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-70962

Agency No. A045-094-677

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted December 9, 2008  
Pasadena, California

Before: NOONAN and SILVERMAN, Circuit Judges, and CONLON,\*\* District  
Judge.

Julio Cesar Calderon appeals the Board of Immigration Appeals's decision  
affirming the Immigration Judge's order finding that Calderon was a removable

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Suzanne B. Conlon, United States District Judge for  
the Northern District of Illinois, sitting by designation.

aggravated felon. The BIA affirmed the IJ on two grounds: (1) Calderon waived his right to contest removability; and (2) Calderon committed a crime of violence.

Calderon conceded before the IJ that his conviction qualified as an aggravated felony. Both times his case was before the BIA, he failed to provide any reason why he should be able to revoke his concession. His opening brief before us failed to even acknowledge the BIA's first reason for affirming the IJ. Even though the government highlighted this failure in its opposition brief, Calderon did not file a reply brief.

We “will not ordinarily consider matters on appeal that are not specifically and distinctly argued in [the] appellant’s opening brief.” *Shanks v. Dressel*, 540 F.3d 1082, 1086 n.3 (9th Cir. 2008) (internal quotation marks omitted). “By failing to articulate any argument challenging [the BIA’s affirmance based on Calderon’s concession], [Calderon] has waived that argument.” *See Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1065 n.17 (9th Cir. 2008). Although we have “discretion to review an issue not raised [in the opening brief] . . . when it is raised in the [opposition] brief,” we decline to exercise that discretion in this case. *See Affordable Hous. Dev. Corp. v. City of Fresno*, 433 F.3d 1182, 1193 (9th Cir. 2006) (internal quotation marks omitted). Unlike the IJ’s decision in

*Mandujano-Real v. Mukasey*, 526 F.3d 585, 588 (9th Cir. 2008), the IJ's decision in this case was not contrary to well-established law.

**PETITION FOR REVIEW DENIED.**